

VZCZCXRO1584  
RR RUEHRC  
DE RUEHB #1362/01 1671419  
ZNR UUUUU ZZH  
R 161419Z JUN 06  
FM AMEMBASSY BUENOS AIRES  
TO RUEHC/SECSTATE WASHDC 4939  
INFO RUEHAC/AMEMBASSY ASUNCION 5573  
RUEHMN/AMEMBASSY MONTEVIDEO 5624  
RUEHSG/AMEMBASSY SANTIAGO 5185  
RUEHBR/AMEMBASSY BRASILIA 5375  
RUEHGL/AMCONSUL GUAYAQUIL 0092  
RUEHRG/AMCONSUL RECIFE 0153  
RUEHRI/AMCONSUL RIO DE JANEIRO 2003  
RUEHSO/AMCONSUL SAO PAULO 2916  
RUEATRS/DEPT OF TREASURY WASHDC  
RUEHRC/USDA FAS WASHDC 2214  
RUCPDOC/USDOC WASHDC

UNCLAS SECTION 01 OF 07 BUENOS AIRES 001362

SIPDIS

SIPDIS

WHA/BSC, WHA/EPSC, WHA, EB/IFD/OIA

E.O. 12958: N/A

TAGS: [ECON](#) [EFIN](#) [ETRD](#) [EINV](#) [PGOV](#) [KIDE](#) [PREL](#) [OPIC](#) [AR](#)

SUBJECT: 2006 REPORT ON INVESTMENT DISPUTES AND

EXPROPRIATION CLAIMS: ARGENTINA

REF: A. SECSTATE 60294

[¶](#)B. 05 BUENOS AIRES 1519

[¶](#)C. 04 BUENOS AIRES 1725

[¶](#)1. The following report outlines new and ongoing investment disputes between the GOA and US investors, updating Post's 2004 Investment Disputes Report (reftel C) and its 2005 update (reftel B). Post is aware of 21 disputes involving 19 claimants against the GOA, of which 12 are active. Since 2004, two cases -- Claimants J and M -- have been settled. Three cases -- Claimants D, s second case, Claimant I and Claimat K -- have been suspended, pending completion of settlement negotiations. Another claimant -- Claimant L -- has requested a discontinuance of its claim. Post also recommends the removal of three other cases -- Claimants B, C and H -- from the report. Claimants C and H have not pursued their claims during the past four years, and Claimant B sold its interests to a non-US company. Of the remaining 12 cases, two -- Claimants R and S -- have been added to the report since 2004.

[¶](#)2. Many of these claims arise in whole or in part from the GOA's implementation of Emergency Law 25,561 on January 6, [¶](#)2002. This law (among other things) converted contract provisions denominated in US dollars into Argentine pesos at a 1:1 rate and rescinded previously-sanctioned indexation of contracts to US inflation indices. US investors contend that such measures unilaterally derogate contractual agreements and effectively expropriate US investor capital.

[¶](#)3. In addition to the claims below, post is aware of other potential US claimants whose disputes are in administrative or informal negotiation stages, or who believe their investments are threatened with expropriation.

[¶](#)4. (a) Claimant A

(b) 2002

(c) Claimant A is a US energy sector utility with gas distribution assets in Argentina. Its dollar-based gas distribution contracts in Argentina were linked to the US producer price index. In March 2002, Claimant A initiated consultations under ICSID, claiming that various provisions of Emergency Law 25,561 voided its distribution contracts and

effectively expropriated its capital investment. Claimant A also charged that the GOA had failed to pay contractually mandated subsidy payments in compensation for pricing its gas at below market rates. Claimant A filed for ICSID arbitration on September 10, 2002. Its request for arbitration was accepted on December 6, 2002. On February 27, 2003, Claimant A's business partner filed an arbitration claim under a bilateral investment treaty between Luxembourg and Argentina. The two claims will be treated jointly. ICSID ruled against GOA's objections to its jurisdiction. The final hearing was held in February, and the panel appointed an independent damages expert. Both parties filed post-hearing briefings on April 3, 2006. An award is expected by the end of the year.

¶5. (a) Claimant B

(b) 2002

(c) Claimant B is a US energy sector holding company that had electrical generation and distribution assets in Entre Rios, Buenos Aires and Rio Negro Provinces of Argentina. In March 2002, Claimant B initiated consultations under ICSID, claiming that various provisions of Emergency Law 25,561 voided its distribution contracts and effectively expropriated its capital investment. Claimant B participated in various informal meetings with GOA officials following the initiation of consultations, but we are not aware of any further action on its claim. Claimant B sold its interests to a British-based investment company, which is pursuing the case under the UK-Argentina bilateral investment treaty. Post therefore recommends that this claim be removed from the report.

BUENOS AIR 00001362 002 OF 007

¶6. (a) Claimant C

(b) 2002

(c) Claimant C is a US diversified insurance company with specialized property and liability coverage assets in Argentina. In March 2002, Claimant C initiated preliminary consultations under ICSID arbitration guidelines, claiming that numerous provisions of Emergency Law 25,561 unilaterally derogated contractual agreements and effectively expropriated Claimant C's capital investment. Its original investment was \$8 million. As four years have passed without any further pursuit of this claim, post recommends that it be removed from the report.

¶7. (a) Claimant D, first case

(b) 2001

(c) Claimant D, a US energy sector firm, has a substantial minority investment in an Argentine gas pipeline whose dollar-based transmission contract was linked to the US producer price index. Claimant D initiated preliminary consultations under ICSID arbitration guidelines in September 2001 following a GOA decision to cease approving index-related increases in gas transmission fees. In May 2002, Claimant D began a process to expand its ICSID claim to address certain provisions of Emergency Law 25,561. Claimant D filed for ICSID arbitration on March 19, 2003. ICSID agreed that this dispute would be heard by the same arbitration panel hearing Claimant D's second arbitration claim against the GOA (see below). ICSID issued a ruling on jurisdiction in January 2004 in favor of Claimant. The tribunal held a final hearing on the merits in November 2005. The arbitrator selected by the GOA resigned in May, and the case has been suspended pending the appointment of a new arbitrator.

¶8. (a) Claimant D, Second Case

(b) 1996

(c) Six western Argentine provinces are attempting to collect over \$3 billion in retroactive stamp tax and gross receipts tax duties from international energy companies operating in their jurisdictions. Claimant D registered its claim with ICSID on April 11, 2001. Because Claimant D asserts that it does not have any stamp tax liability, there is no information on the amount of this claim. In April, 2004, the Argentine Supreme Court ruled that the stamp tax levies imposed by another province were invalid. Claimant D and the GOA have agreed to suspend the case, pending a final ruling by the Supreme Court.

¶9. (a) Claimant E

(b) 2000

(c) Claimant E is a US energy sector infrastructure firm, which operates natural gas pipelines in Argentina through a local company, under a license granted to the local company by the GOA. The Argentine gas legal framework and the local company's license linked the tariffs for gas transmission services to the US producer price index. On October 20, 2000, following a decision by the GOA to cease approving index-related increases in gas transmission tariffs, Claimant E initiated preliminary consultations with the GOA under the US-Argentine Bilateral Investment Treaty. On July 24, 2001, Claimant E filed for ICSID arbitration, claiming over \$100 million in compensation.

On January 6, 2002, the GOA passed Emergency Law 25, 561, which abolished adjustments and indexation clauses in contracts contained in licenses, and converted all dollar-denominated tariffs into pesos at the mandatory rate of 1 peso per USD. On February 13, 2002, Claimant E wrote to the GOA, saying these measures further affected Claimant E's property rights and were tantamount to an expropriation. On

BUENOS AIR 00001362 003 OF 007

July 5, 2002, Claimant E submitted its Memorial seeking \$261.1 million in damages from the GOA for expropriation of its investment. On May 12, 2005, Claimant E received an award of \$133.2 million from the ICSID tribunal, with interest to date of payment, and granting a right to the GOA to purchase Claimant E's interest in the local subsidiary for an additional payment. On September 27, 2005, the GOA filed an application for institution of annulment proceedings. An annulment panel has been formed and the first hearing in the annulment process was held June 5, 2006. A final hearing is expected in March 2007.

¶10. (a) Claimant F

(b) 2000

(c) Claimant F is a diversified US energy sector firm with gas transmission assets in Argentina, whose dollar-based transmission contract was linked to the US producer price index. In October 2000, following a GOA decision to no longer approve index-related increases in gas transmission fees, Claimant F initiated preliminary consultations under ICSID arbitration guidelines. It formally filed for ICSID arbitration in March 2001. In May 2002, Claimant F began a process to expand its ICSID claim to include provisions of Emergency Law 25,561. On April 30, 2004, the arbitral panel issued its decision on jurisdiction, ruling in favor of Claimant F on all jurisdictional issues. The panel held a hearing on the merits in January 2005, and both parties submitted post-hearing briefs in February 2005. Claimant is awaiting a decision from the tribunal.

¶11. (a) Claimant G, First Claim

(b) 2001

(c) Claimant G is a water resource management company that through a local subsidiary won a 30-year concession in 1999 to manage a significant share of Buenos Aires province's water and wastewater management facilities. Many of its tariff rights under the Concession Contract were effectively repudiated by the Province when the water in one city turned sour in April 2000 because of algae in the local reservoir, which was under the Province's exclusive control. According to Claimant G, provincial officials blamed Claimant G for the problems, refused to allow the company to bill for its services, required the company to provide bottled water to the town at the company's expense, and publicly announced that people should not pay their water bills. The Province also allegedly repudiated Claimant G's right to amortize its bid payment. In January 2001, Claimant G filed for ICSID arbitration. Following unsuccessful settlement efforts, an ICSID panel was constituted in July 2001, and the case was formally accepted by the panel in September 2001. While the arbitration case remains in process, Claimant G filed for bankruptcy in December 2001 and returned operation of all its water and wastewater management facilities to provincial authorities in March 2002. The final hearing on the merits was held in March 2005, and an award on the merits is expected by the end of June 2006.

¶12. (a) Claimant G, second claim

(b) 2003

(c) Claimant G held, through a local subsidiary, a concession to manage a significant share of Mendoza province's water and wastewater management facilities. Claimant G filed for ICSID arbitration in 2003, alleging that by interfering with Claimant G's contractual rights, the province effectively repudiated its concession. ICSID registered the claim on December 8, 2003. Each side has appointed an arbitrator, but a panel president has not yet been selected.

¶13. (a) Claimant H

(b) 2000

BUENOS AIR 00001362 004 OF 007

(c) In early 1998, Claimant H purchased a 40 percent interest in Provincia de Salud S.A. ("Provincia de Salud") and a 20 percent interest in Provincia Aseguradora de Riesgos del Trabajo, S.A. ("Provincia ART"), whose parent is the Banco de la Provincia de Buenos Aires ("Provincia"), which is owned by the Buenos Aires provincial government. Claimant H alleged that its \$28 million investment in Provincia Salud had been depleted through mismanagement and waste of corporate assets, compounded and overseen by irresponsible governance processes under the overall control of Provincia.

Claimant H also alleged that its partner abused its position as a majority shareholder and violated the shareholder's agreement by allowing Provincia Salud to incur unauthorized obligations (many to other subsidiaries of Provincia). In May 2000, Provincia forced an increase in the capital of Provincia Salud upon terms and under circumstances that Claimant H describes as an effective confiscation of its investment. Claimant H began both local legal action and arbitration under the BIT, but in March 2002, Claimant H sold its shares in Provincia Salud and abandoned its arbitration claim and legal action. Claimant has not pursued this claim further during the past four years, and post recommends that this case be removed from the report.

¶14. (a) Claimant I

(b) 2002

(c) Claimant I owns and operates several hydrocarbon and

hydroelectric power plants in Argentina. It has invested \$1 billion in equity and \$1 billion in debt in these projects. In March 2002, Claimant I pursued informal negotiations, claiming that the pesification of its dollar-denominated distribution contracts, and the devaluation of the peso, have resulted in the effective expropriation of a large portion of the value of Claimant I's investment. In April 2005, one of Claimant I's subsidiaries signed a definitive agreement on re-negotiation of its concession agreement with the GOA. The agreement was ratified by the Argentine Congress in May, and Claimant I expected the GOA to sign and publish the agreement in the near future. As part of that agreement, Claimant I agreed to suspend the portion of its claim related to this subsidiary, and to definitively drop its claim once a new tariff agreement is approved. Negotiations continued between the GOA on agreements and Claimant's other two distribution subsidiaries and its generation business. On January 23, 2006, ICSID suspended proceedings upon the request of both parties, pending a final settlement agreement.

¶15. (a) Claimant J

(b) 2001

(c) Claimant owned an interest in an oil and gas company involved in the exploration for and production of hydrocarbons in Neuquen, Rio Negro, Santa Cruz, Tierra del Fuego and Mendoza Provinces of Argentina. On February 25, 2002, Claimant J requested consultations, claiming over \$100 million in damages allegedly resulting from the pesification of its contracts, the dilution of fiscal credits, the imposition of export taxes, the losses on sales due to the exchange rate, and the imposition of an oil export tax in alleged violation of 1992 decrees guaranteeing export tax stability. On October 16, 2002, Claimant J filed notice of its intention to negotiate before beginning formal ICSID arbitration. ICSID formally registered the claim on June 5, ¶2003. On April 4, 2005, both sides filed a request with ICSID for the discontinuance of proceedings based on a final settlement agreement between the parties, but has not yet been accepted formally by ICSID.

¶16. (a) Claimant K

(b) 2001

(c) Claimant K is an information systems provider that won a \$37 million public bid contract to provide information services to the judicial branch. The contract amount was

BUENOS AIR 00001362 005 OF 007

payable in 36 equal, monthly installments beginning when the system was completed. Work started in early 1998. 85 percent of the work had been completed by November 1999, and the remaining 15 percent was completed in December 2000. During work on the contract, Claimant K agreed to do \$30 million in additional information systems work for the GOA. It also provided the GOA with \$3.5 million in postal machinery. In January 2001, the GOA began paying for the 85 percent work completed in November 1999, and in February 2001, on the remaining 15 percent. In December 2001, the contract was pesified by law when Argentina did away with its fixed, 1-to-1 conversion system with the US dollar. From January 2002 through April 2003, the GOA made no payments under the contract, even after it had been pesified. The GOA has recognized the \$3.5 million debt for the postal machinery, but it allegedly refuses to recognize the \$30 million in additional work.

Claimant K filed notice of its intention to pursue ICSID arbitration in October 2002. It held friendly consultations with the GOA in February 2003 without success. ICSID formally registered Claimant K's claim on October 15, 2003. The claim is based on allegations of the pesification of the original contract, the refusal to recognize the additional work done under the contract, and the non-payment from

February 2002 through April 2003. Total claim amount is approximately \$55 million. According to Claimant K, it did not include a claim for the value of the postal machinery because the GOA has recognized that debt and repeatedly promised to pay it. Before an arbitral panel was constituted to hear the claim, the parties signed an agreement in August 2005 to postpone the case and jointly appointed accounting and technical experts to examine the facts. A report from the accounting expert is expected by the end of June 2006, and the technical expert will begin work once that report is completed. These reports will be used as the basis for settlement negotiations.

¶17. (a) Claimant L

(b) 2004

(c) Claimant L is a US reinsurance company that underwrote Argentina's privatized pension system between 1994 and 2001. Claimant L's liability is based upon the market value of the pension system's assets. In 2002, the GOA implemented measures that fix the price of certain pension fund assets (Argentine Government bonds) at above-market prices. Because reinsurance contract benefits are linked to the value of these assets, this regulatory measure has allegedly increased Claimant L's financial obligations by 45 percent. The Claimant contends that it is entitled to compensation for the substantial losses suffered because of the manipulation of asset values and has filed a request for ICSID arbitration. After holding a hearing on witnesses in September 2005, the ICSID held its first session on November 22, 2005. In March 2006, Claimant presented a letter of discontinuance to ICSID because it had mitigated damages through negotiations with local insurance companies.

¶18. (a) Claimants M

(b) 2004

(c) Claimants M are US citizens who own real property in Bucharest, Romania. The communist government of Romania had confiscated the property from Claimants M's family but returned it to the family in June 2003. According to Claimants M, however, Argentine diplomatic personnel in Romania occupied the property as a residence. Claimants M notified the GOA that the Romanian government had returned the property to them, and that they wanted to re-negotiate the lease on the property. In response, the GOA allegedly asserted that it would continue to occupy the property and pay a rent of its choosing that was below market rates. On April 1, 2004, Claimants notified the GOA of the pendency of an investment dispute under the US-Argentina BIT, claiming that the continued occupation of the property constituted an expropriation. The GOA subsequently agreed to leave the

BUENOS AIR 00001362 006 OF 007

property, and Claimants now have recovered occupancy of their property. Post therefore recommends that this case be removed from the report.

¶19. (a) Claimant N

(b) 2003

(c) Claimant N owned an interest in electrical generating plants and in an oil and gas company operating in Argentina. In January 2002, Argentina pesified dollar-denominated oil and gas supply contracts, imposed an oil export tax in alleged violation of decrees from 1992 that guaranteed export tax stability, and changed the electrical generation regulatory and legal framework based on which the company invested. Claimant filed for ICSID arbitration in June 2003.

On April 27, 2006, the panel issued a decision on jurisdiction in favor of Claimant N. The arbitration process continues on the merits of the claim.

¶20. (a) Claimant O

(b) 2003

(c) Claimant O is a provider of leasing services in Argentina. Claimant O's claim was registered with ICSID on February 27, 2004. The claim asserts that various actions by the Government of Argentina effectively expropriated the value of its investment. On October 13, 2005, Claimant filed a memorial on the merits of the case. On December 28, 2005, the GOA filed its objections to jurisdiction. Claimant O was expected to file a counter-memorial on jurisdiction on March 2, 2006. A hearing is expected to take place later this year.

¶21. (a) Claimant P

(b) 2003

(c) Claimant is an insurance company with operations in Argentina. ICSID registered Claimant P's complaint on May 22, 2003. Post has not been able to obtain details about the substance of Claimant's dispute. An arbitration panel has been selected, and the Claimant filed its Memorial on the Merits on April 28, 2004. According to the ICSID website, the panel held a hearing on jurisdiction in February 2005 and that it had jurisdiction over the claim. Argentina has filed a counter-memorial, and a hearing is expected to be held in late 2006.

¶22. (a) Claimant Q

(b) 2003

(c) Claimants Q are two companies with very similar shareholders who owned an interest in both electrical generating plants and an oil and gas company doing business in Argentina. In January 2002, Argentina pesified dollar-denominated oil and gas supply contracts, imposed an oil export tax in violation of decrees from 1992 that guaranteed export tax stability, and changed the electrical generation regulatory and legal framework on which the company was induced to invest by pesifying dollar-denominated capacity payments and regulating the previously unregulated electrical generation industry in a way that does not allow it to be profitable. Claimants filed their claim with ICSID in June 2003, and the two claims are being heard jointly by one arbitration panel. The panel held a hearing on jurisdiction in March 2005, and a decision is expected in July 2006.

¶23. (a) Claimant R

(b) 2004

(c) Claimant R is an oil and gas exploration and development company. Claimant R contends that its investment was effectively expropriated following the 2002 pesification of its dollar-denominated oil and gas supply contracts.

BUENOS AIR 00001362 007 OF 007

Claimant R also complains that the imposition of export taxes in 2002 violated the decrees that were in force at the time of its investment. Claimant R's claim was formally registered August 5, 2004. A panel has not yet been constituted; both sides have named an arbitrator, but a president has not yet been chosen.

¶24. (a) Claimant S

(b) 2005

(c) Claimant S is an Argentina-based company with US and German investors. It formally registered its claim on June 23, 2005. Claimant has sought \$20 million from the GOA, claiming that a local bank illegally canceled a contract in

2003 and expropriated its funds. An arbitral panel was constituted on March 27, 2006, and the case is still pending.

¶25. Identification of claimants

Claimant A = Sempra

Claimant B = PSEG

Claimant C = Chubb insurance

Claimant D = Enron-TGS

Claimant E = CMS - TGN

Claimant F = Louisville Gas and Electricity

Claimant G = Enron Azurix

Claimant H = Capital Z Partners

Claimant I = AES

Claimant J = Pioneer

Claimant K = Unisys

Claimant L = RGA Reinsurance

Claimants M = Steven and Robert Ausnit

Claimant N = El Paso Energy

Claimant O = CIT Group

Claimant P = Continental Casualty Company

Claimant Q = Pan American Energy/BP America

Claimant R = Mobil Oil Company

Claimant S = Asset Recovery Trust

¶26. To see more Buenos Aires reporting visit our classified website at: <http://www.state.sgov.gov/p/wha/buenosaires>

GUTIERREZ